IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 279 of 2006

Imtiyaz Ahmed Shaukatali .. Appellant

versus

Union of India & Anr. .. Respondents

...

Ms.Vidya Manjrekar i/b P.M,Havnur for appellant.

Mr.Suresh Kumar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 24th November 2006

P.C.:

1. Heard counsel for the parties.

2. This appeal is directed against the judgement and order dated 27th March 2006 by the learned Judge of the City Civil Court Bombay dismissing the appellant's motion for injunction restraining the respondent railway administration from erecting a compound wall.

3. The respondent filed a suit bearing Short Causes Suit no. 17 of 2006 for an injunction restraining railway authorities from erecting a compound wall to their property. By the impugned order, the motion was dismissed. That order is impugned herein.

4. A Writ Petition no.2405 of 2001 was filed in the public interest against the railway administration by a citizen. In the said writ petition, it was alleged that accidents were taking place in the railway track and the railway was not providing sufficient mechanism for preventing the accidents and treatment to the victim of the accidents. In the writ petition, the Division Bench of this Court inter alia issued the following direction.

> "(x) The railways undertake that in order to prevent the accidents, a boundary wall on both sides of the track wherever possible could be erected and existing walls be repaired."

5. In order to comply with the undertaking given by the railways to this court, the railway started erecting compound wall on both the sides of the tracks. When the

compound wall was being erected near the suit site, the present suit was filed by the appellant alleging that if the compound wall is erected access to his shop would be closed and therefore railway administration should be prevented from erecting the compound wall.

6. Before me, learned counsel for the appellant submitted that the appellant's shop was not on the railway property but was on the land belonging to the Bombay Municipal Corporation and therefore, the railway administration has no right to erect the wall as the compound wall for the railway track.

7. No evidence was produced to show that the appellant's shop is on the land belonging to the Bombay Municipal Corporation. Even before me nothing has been produced to show that the appellant had erected the structure upon land of the Bombay Municipal Corporation and not of the railways. The railway authorities are erecting the compound wall in accordance with the undertaking given to the Division Bench of this Court. It therefore cannot be said that the railway authorities are committing any error or illegality in erecting the compound wall as a boundary for their railway track.

8. For these reasons, appeal is dismissed

summarily..

(D.G. KARNIK, J)